



# Does One Size Fit All?

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# IP Uniformity

- copyright and patent designed to deal with incentive problem
- BUT -- innovation practices vary widely
  - inter- and intra-industry
    - motion pictures vs. commercial graphic arts
    - software (OS vs. application)
  - variation increasing over time
    - microprocessor fab 
    - sound recordings 
  - technology shifting innovation environments within industries
    - genetics
    - music

# IP Uniformity

- one-size-fits-all IP both over- and under-inclusive
  - too much incentive for some
  - not enough for others
  - uniformity cost
- should we explore more industry-specific rules?
  - reduce uniformity cost
  - may impose other costs
    - rent-seeking
    - administration (judges, litigants)

# IP Uniformity

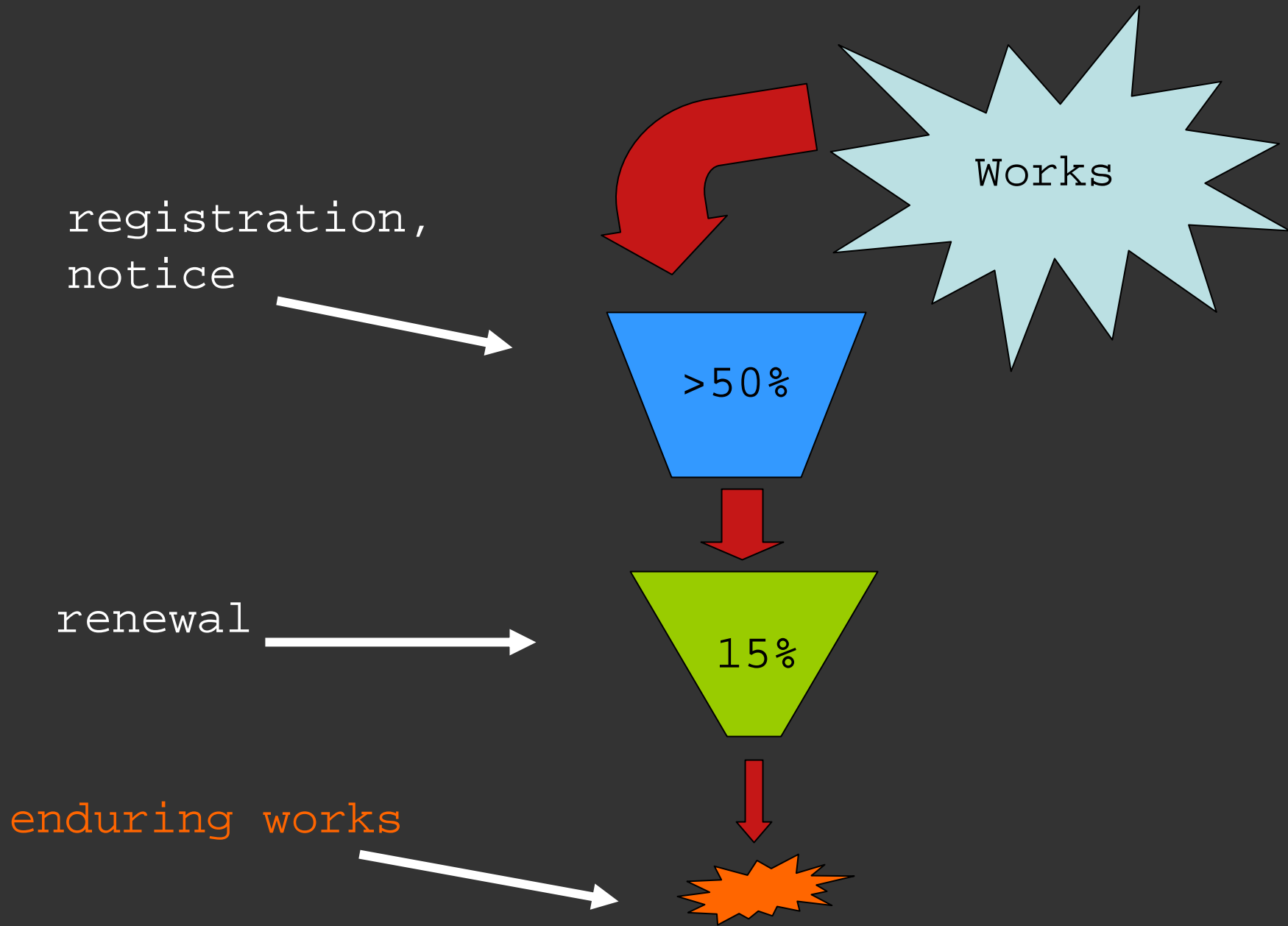
- patent
  - duration
    - utility vs. design
    - industry-specific terms/sui generis regimes
      - pharma (Hatch-Waxman)
      - sui generis: mask works, boat hulls, fashion?
  - “soft” tailoring
    - examination
    - maintenance fees
      - » 3.5 (18%)
      - » 7.5 (42%)
      - » 11.5 (64%)

# IP Uniformity

- patent
  - scope: adjusted via courts interpreting open-ended "standards"
    - PHOSITA -- what is "ordinary" skill?
      - obviousness
      - enablement
      - claim construction
    - utility -- *Fisher* ("tagging" function of EST not enough)
    - product of man/product of nature
      - DNA -- "isolate and purify"
      - the product of nature = the genome? the gene? the sequence?
      - Venter data/epigenetics

# IP Uniformity

- copyright
  - duration
    - industry-specific terms?
      - industrial design (boat hulls, etc.)
    - “soft” tailoring -- formalities
      - 1790 -> 1978 (roughly): “opt-in” ©
        - » registration
        - » deposit
        - » notice
        - » renewal
        - » recordation of transfers (weak)
      - 1978 -> present: “opt-out ©”



# IP Uniformity

- copyright

- scope

- substantial similarity (Altai)

- fair use

- competition (reverse engineering - Sega)

- free speech (parody - Campbell)

- useful articles

- idea/expression + originality



fashion

# splurge



**SPLURGE:**  
Brocade jacket,  
\$2390, Luisa Beccaria;  
leather sandals, \$205,  
Stuart Weitzman.

**STEAL:**  
Jacquard jacket,  
\$398, Perry Ellis  
Women's; dress, \$310,  
Theory; sandals,  
\$49, Colin Stuart for  
Victoria's Secret.



steal  
steal

SPLURGE







## STEAL

### SPLURGE:

Silk trenchcoat, \$1565,  
Behnaz Sarafpour;  
stretch jeans, \$350,  
Escaïs; slingbacks,  
\$205, Stuart  
Weitzman; bag, \$950,  
Celine; white-gold  
hoops, \$495, Dean  
Harris; watch, \$795,  
Christian Dior.

### STEAL:

Linen trenchcoat,  
\$159, Jones New York  
Collection; jeans,  
\$139, Bebe; slingbacks,  
\$49, Collin Stuart  
for Victoria's Secret;  
hoops, \$6.50,  
Claire's; watch, \$75,  
DKNY Time.

# go to shops

**SPLURGE:**  
Cardigan, \$187,  
Shoshanna; silk dress,  
\$1000, Jeffrey Chow;  
sandals, \$205, Stuart  
Weitzman; bracelet,  
\$185, R.J. Graziano.  
**STEAL:**  
Cardigan, \$44, Gap;  
dress, \$245, A.B.S.  
by Allen Schwartz;  
sandals, \$49, Colin  
Stuart for Victoria's  
Secret. For informa-  
tion, see Shopping  
Directory. Hair: Bill  
Westmoreland for  
artandcommerce.  
com. Makeup: Matin  
for artistsbytimothy  
priano.com. Manicure:  
Tamika for artistsby  
timothypriano.com.  
Models: Karolina &  
Line. Production:  
Ziggy Lenn/House  
Productions. Shot on  
location at the Shops  
at Columbus Circle,  
Time Warner Center,  
NYC; guest services:  
(212) 823-6300.



FOR SHOPS AT COLUMBUS CIRCLE EVENT OPPORTUNITY CALL (212) 823-6300



steal  
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